

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

First Named			
Inventor	: Hartmann, Fred O.		
Appln. No.	: 10/612,816		
Filed	: July 2, 2003		Group Art Unit:3652
Title	: HAND-TRUCK APPARATUS		Examiner: Adams,
			Gregory
Docket No.	: G351.12-01		

**AMENDED APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SENT VIA EFS-Web**

Sir:

**INTRODUCTION**

This is an appeal from an Office Action mailed on 11 August 2006 in which claims 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27-32 and 34-38 were finally rejected. An Appeal Brief was filed on 08 January 2007, but was found to be non-compliant in a Notification of Non-Compliant Appeal Brief mailed on 28 March 2007. In response thereto, this Amended Appeal Brief is now believed to be in compliance with 37 CFR 41.37.

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**I. REAL PARTY IN INTEREST**

Grand Steer Inc. is the real party in interest. Grand Steer Inc., a corporation organized under the laws of the state of Minnesota, and having offices at 322 North Horace Ave, Suite #3, Thief River Falls, MN 56701, has acquired the entire right, title and interest in and to the invention, the application, and any and all patents to be obtained therefor, as set forth in the Assignment recorded on 15 October 2003 at Reel 14583 and Frame 0446.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no known related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**III. STATUS OF THE CLAIMS**

- I. Total number of claims in the application.  
Claims in the application are: 1-38.
- II. Status of all the claims.
- A. Claims cancelled: 1-3, 5, 8, 10, 12, 21, 24, 26, and 33.
  - B. Claims withdrawn but not cancelled: None.
  - C. Claims pending: 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27-32 and 34-38.
  - D. Claims allowed: None.
  - E. Claims rejected: 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27-32 and 34-38.
  - F. Claims Objected to: None.
- III. Claims on appeal  
Claims on appeal: 14, 20, 22, 27, 28, 34-38.

**IV. STATUS OF AMENDMENTS**

No amendment was filed subsequent to the final rejection.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 14 of the present invention defines a hand truck 10 as including a platform 12, (Page 4, lines 7-16; Figures 1, 2 and 4), a channel member 32 fixedly attached to an underside of the platform 12 (Page 5, lines 25-28; Figures 3 and 4) and a locking plate 60 (Page 8, lines 10-11; Figure 5). The hand truck 10 also includes first and second spaced-apart hinge members 42 fixedly attached to the channel member 32, (Page 5, line 28 through page 6, line 2; Page 6, lines 4-6; Figure 5), for connecting a handle 34 connectable to the platform. (Page 5, lines 26-28; Page 6, lines 3-5; Figures 1 and 5). The handle 34 includes a unitary rigid member 38 slidably disposable within the channel member 32 and between the first and second spaced apart hinge members 42, (Page 6, lines 2-5), a tongue portion 56 spaced-apart from and extending parallel to the rigid member 38, (Page 8, lines 6-10; Figures 5 and 6), and stops 44 positioned proximate a distal end of the rigid member 38 (Page 6, lines 5-6; Figure 5). Upon extracting the handle 34 from the channel member 32, stops 44 engage the first and second hinge members 42 and the handle 34 is pivotally positionable between a lowered position and a raised position. (Page 7, lines 16-19). The handle 34 is also lockable to the platform by positioning the handle 34 to dispose the locking plate 60 between the tongue portion 56 and the rigid member 38 (Page 8, lines 12-20; Figure 6).

Independent claim 20 defines the invention as a dual-purpose material handling system 10 having a platform 12 with a plurality of sides for supporting a load placed thereon. (Page 4, lines 7-16; Figures 1, 2 and 4). The handling system 10 also includes a unitary rigid handle 34 positionable between a stowed position and a locked position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). A

channel member 32 fixedly attaches to an underside of the platform 12 for receiving the handle 34. (Page 5, lines 25-28; Figures 3 and 4). Support members 72 extend downward from the platform 12 and are positioned parallel to the channel member 32, wherein the support members 72 and the channel 32 member are positioned to receive a forklift between the channel member 32 and either support member 72 or transversal to the channel member 32 and the support members 72, thereby allowing the material handling system 10 to be transportable by the forklift from any side without the forklift contacting the handle regardless if the handle 34 is in the locked position or the stowed position. (Page 9, lines 18-27 through page 10, lines 1-2; Figure 3). The material handling system further includes a locking mechanism 54. (Page 8, lines 5-11; Figure 5). The locking mechanism 54 includes a locking plate 60, (page 8, lines 10-11; Figure 5)

Claim 22 depends from independent claim 20 and further defines the locking plate of the locking mechanism to be attached to the channel member 32 (Figure 5).

Independent claim 27 defines the present invention as being a hand-truck 10 including a platform 12, (Page 4, lines 6-16; Figures 1, 2 and 4), a unitary rigid handle 34 connected to the platform 12, (Page 5, lines 26-28; Page 6, lines 3-5; Figures 1 and 5), wherein the handle 34 is positionable between a slidable position, a pivotable position and a locked position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). The hand truck 10 also includes a locking plate 60 connected to the platform 12, (Page 8, lines 10-11; Figure 5), and a tongue member 56 extending from and parallel to the handle 34. (Page 8, lines 6-10; Figures 5 and 6). The handle 34 is positionable to place the locking plate 60 between the tongue member 56 and the handle 34 to rigidly lock the handle



the platform 12. (Page 8, lines 15-20; Figures 5 and 6). The handle 34 is also accessible at each position to operatively maneuver the hand-truck.

Independent Claim 28 defines the present invention as being a hand-truck having a platform 12, (Page 4, lines 7-16; Figures 1, 2 and 4), with a unitary rigid handle 34 connected to the platform 12, (page 5, lines 26-28; page 6, lines 3-5; Figures 1 and 5), wherein the handle 34 is positionable between a slidable position, a pivotable position and a locked position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). While in the locked position, the handle 34 is substantially perpendicular and fixedly securable to the platform to prevent pivotal movement of the handle 34. (Page 7, lines 24-28; Figure 1). The hand truck 10 also includes first and second spaced-apart hinge members 42 positioned beyond an edge and fixedly connected to the platform 12, (page 5, line 28 through page 6, line 2; page 6, lines 4-6; Figure 5), wherein the handle slidably disposes between the first and second spaced-apart hinge members 42. (Page 6, lines 4-10; Figure 5). The hand-truck 10 further includes first and second stop members 44 attached proximate to a distal end of the handle 34. (Page 6, lines 5-6; Figure 5). Upon slidably positioning the handle toward the pivotable position, the first stop member engages the first hinge member and the second stop member engages the second hinge member whereby the handle is pivotal about the first and second hinge members. (Page 6, lines 6-10).

Claim 34 depends from independent claim 28 and further defines the invention as including a locking plate 60 connected to the platform 12 and a tongue member 56 spaced-apart from the handle 38. The tongue member 56 is engageable with the locking plate 60, and upon so doing, the handle 38 fixedly secures to the platform 12 and is in the locked position. (Page 8, lines 12-24; Figures 5 and 6).

Claim 35 depends from claim 34 and further defines the tongue member 56 of the present invention as being fixedly attached to an outer longitudinal surface of the rigid member 38. (Page 8, lines 6-10; Figures 5 and 6).

Claim 36 depends from independent claim 14 and further defines the tongue member 56 of the present invention as being fixedly attached to an outer longitudinal surface of the rigid member 38. (Page 8, lines 6-10; Figures 5 and 6).

Claim 37 depends from independent claim 20 and defines the invention as a dual-purpose material handling system 10 having a platform 12 with a plurality of sides for supporting a load placed thereon. (Page 4, lines 7-16; Figures 1, 2 and 4). The handling system 10 also includes a unitary rigid handle 34 positionable between a stowed position and a locked position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). A channel member 32 fixedly attaches to an underside of the platform 12 for receiving the handle 34. (Page 5, lines 25-28; Figures 3 and 4). Support members 72 extend downward from the platform 12 and are positioned parallel to the channel member 32, wherein the support members 72 and the channel 32 member are positioned to receive a forklift between the channel member 32 and either support member 72 or transversal to the channel member 32 and the support members 72, thereby allowing the material handling system 10 to be transportable by the forklift from any side without the forklift contacting the handle regardless if the handle 34 is in the locked position or the stowed position. (Page 9, lines 18-27 through page 10, lines 1-2; Figure 3). The material handling system further includes a locking mechanism 54. (Page 8, lines 5-11; Figure 5). The locking mechanism 54 includes a locking plate 60, (page 8, lines 10-11; Figure 5), and a tongue member 56 attached to and spaced-apart from an outer longitudinal surface of the

handle 34. (Page 8, lines 6-10; Figures 5 and 6). The handle 34 fixedly secures to the platform 12 by disposing the locking plate 60 between the tongue member 56 and the handle 34. (Page 8, lines 16-20; Figure 6).

Claim 38 depends from independent claim 27 and further defines the tongue member 56 of the present invention as being fixedly attached to an outer longitudinal surface of the rigid member 38. (Page 8, lines 6-10; Figures 5 and 6).

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Whether claim 28 of the present application was properly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,582,045 issued to Howe.
- B. Whether claims 27 and 38 of the present application were properly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,725,946 issued to Welter.
- C. Whether claims 14, 28, 34, 35 and 36 of the present application were properly rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of the Welter patent in view of the Howe patent.
- D. Whether claims 20, 22 and 37 of the present application were properly rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of the Welter patent in view of the Howe patent and U.S. Patent No. 5,078,415 issued to Goral.

## **VII. ARGUMENT**

### **A. Whether claim 28 of the present invention was properly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,582,045 issued to Howe**

The Examiner erroneously rejected claim 28 of the present invention under 35

U.S.C. §102(b) over the Howe patent. 35 U.S.C. 102(b) states as follows:

A person shall be entitled to a patent unless... the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

35 U.S.C. §102(b).

Independent claim 28 of the present invention is an apparatus claim. As M.P.E.P. § 2114 states, apparatus claims must be structurally distinguishable from the prior art. Claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 U.S.P.Q. 528, 531 (C.C.P.A. 1959). Further, the performance of function is not anticipation. Structural differences are the overriding concern with anticipation claims. As M.P.E.P. § 2114 additionally states that a prior art device can perform all the functions of the apparatus claim and still not anticipate the claim. In other words, a prior art reference cannot anticipate the claim if there is any structural difference. Further, to anticipate a claim, the reference must teach every element of the claim. M.P.E.P. § 2131. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference.” (emphasis added) *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir.

1987). “The identical invention must be arranged as required by the claim....” *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

Independent Claim 28 defines the present invention as a hand-truck having, *inter alia*, first and second spaced-apart hinge members positioned beyond an edge and fixedly connected to a platform. Independent claim 28 further defines the hand-truck as having a unitary rigid handle connected to the platform, the handle positionable between a slidable position, a pivotable position and an extended locked position wherein the handle is substantially perpendicular and fixedly securable to the platform while in the extended locked position to prevent pivotal movement of the handle. Independent claim 28 was introduced into the present application by Amendment on 10 January 2006 and has never been amended. In twice rejecting independent claim 28 of the present application, the Examiner’s comments were focused primarily on the degree of rotation, or verticality, of the handle. In so doing, the Examiner erroneously overlooked the structural differences of the positioning of the hinge members as defined by claim 28 of the present invention and those as suggested by the Howe patent. Referring to page 1, lines 96-102 of the Howe patent:

A pair of channels or guide members 17 are secured lengthwise and parallel to each other to the underside of the platform 10. Hollow castings 19 are secured to the forward ends of the channels 17 to form pockets 20 at the ends of the grooves 18 of the channels.

Figures 1, 4 and 5 of the Howe patent clearly illustrate that the hollow castings 19 are positioned flush with the underside edge of platform 10, and that pockets 20 (which the Examiner has taken to be hinge members) are positioned below platform 10. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721

F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Castings 19 or pockets 20 are by no means positioned beyond the edge of platform 10. Claim 28 of the present application explicitly defines the spaced-apart hinge members as being positioned beyond an edge of the platform, and claim 28 is therefore structurally distinguishable from the Howe patent. As such, claim 28 of the present application is not anticipated by the Howe patent.

Alternatively, the Howe patent teaches away from the handle being positionable substantially perpendicular to the platform when in a locked position. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). As illustrated in Figure 1 of the Howe patent, the pockets 20 are positioned below the platform 10. This positioning of the pockets 20 does not fully allow the handle 22 to pivot to a point substantially perpendicular to the platform 10 as the handle 22 will eventually engage the underside of the platform 10 well before coming anywhere near substantially perpendicular to the platform. Also, and again referring to Figure 1 of the Howe patent, the handle 22 is at about a forty-five degree angle with respect to the platform, and there does not appear to be much more play in the handle 22 before either coming into contact with the underside of the platform 10 or angle-iron bumper 11. Further, closer inspection of Figure 1 reveals that hook 28 is engaged to handle 22, and as stated in the Howe patent, the "...hook 28 is secured to the front end of the platform 10 and serves as a rest or support for the handle *when in the operative position*." (Emphasis added) (page 2, lines 7-10). Being that Figure 1 illustrates the handle *in an operative position* which is at about a

forty-five degree angle relative to the platform 10, and it appears that any further movement of the handle 22 would be impermissible, the Howe patent simply does not contemplate positioning the handle any further than a forty-five degree angle relative to the platform 10. The Howe patent does not suggest, teach or disclose that the handle can come anywhere near being perpendicular to the platform, and in fact, if anything, only suggests that the handle is positionable to about forty-five degrees relative to the platform.

The Howe patent therefore does not teach each and every element as set forth in claim 28 of the present application, neither expressly nor inherently, and therefore does not anticipate claim 28. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 28 be reversed.

**B. Whether claims 27 and 38 of the present application were properly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,725,946 issued to Welter**

The Examiner erroneously rejected claims 27 and 38 of the present invention under 35 U.S.C. 102(b) over the Welter patent. 35 U.S.C. 102(b) is as follows:

A person shall be entitled to a patent unless... the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

35 U.S.C. 102(b).

To anticipate a claim, the reference must teach each and every element of the claim.

M.P.E.P. § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference."

(emphasis added) *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2



U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be arranged as required by the claim....” *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

**1. Claim 27**

The Examiner erred in rejecting Claim 27 under 35 U.S.C. 102(b) over the Welter patent.

a. The Welter Patent does not disclose a handle being positionable between a slidable position, a pivotable position and a locked position.

In the Office Action (Final) dated 08 August 2006, the Examiner stated in part:

In the context of Applicant’s claims, slidable means that moment when the handle moves from a locked position to a stowed position comprising all the movement between the two points. Because Applicant’s specification does not enlighten as to slidable, its (sic) presumed to include that length of the movement when Applicant’s handle moves from a (sic) upright to horizontal in order to align with the channel.

Applicant respectfully believes that the Examiner has erred in coming to the above conclusion. Independent claim 27 defines the present invention as a hand-truck having, *inter alia*, a unitary rigid handle connected to a platform and positionable between a slidable position, a pivotable position and a locked position. Claim 27 therefore claims three separate and distinct positionings of the handle of the present invention. For example, when the handle of the present invention is in the slidable position, the handle is in neither the pivotable position nor the locked position. Or when the handle of the present invention is in the pivotable position, the handle is in neither the slidable position nor the locked position. Or when the handle of the present invention is in the locked position, the handle is in neither the slidable position nor the pivotable position. Moreover, each of these positions is supported and described within the specification of the present application. For instance, the slidable position includes the slidable

translational movement of the handle 34 within the channel member 32 to stow the handle 34 under the platform 12 as disclosed at page 6, lines 18-25 of the present application. The pivotable position includes the pivotal movement of the handle 34 against the respective hinge members 42 between a lowered and raised position, and the infinite number of positions therebetween, as disclosed at page 6, lines 6-10 and at page 7, lines 16-26 of the present application. The locked position includes the handle 34 being fixedly locked to the platform 12 with the handle 34 being in a substantially vertical position as disclosed at page 8, lines 12-28 of the present application. However, what the Examiner has taken to be the “slidable position” (i.e., that length of the movement when Applicant’s handle moves from a (sic) upright to horizontal) is in fact the “pivotable position” as defined by claim 27 of the present application, which is entirely supported by Applicant’s specification.

Turning again to the Welter patent, there is no teaching or suggestion of a slidable position with regard to handle 17. The Welter patent merely suggests a handle 17 connected to a yoke 15. The yoke 15 pivotally connects to the frame which is lockable to the frame by engaging a latch 16 with a notch 14. The handle 17 of the Welter patent is capable of being pivotally positioned from a lowered to raised position, and lockable at several positions therebetween. Thus, while the handle 17 of the Welter patent can arguably be positioned between a pivotable position and a locked position, the Welter patent neither teaches, suggests nor discloses that handle 17 is positionable into a slidable position separate and distinct from either the pivotable position or the lockable position.

The Welter patent therefore does not teach each and every element as set forth in claim 27 of the present application, neither expressly nor inherently, and therefore does

not anticipate claim 27. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 27 be reversed.

b. The Welter patent does not disclose that the handle is positionable to place the locking plate between the tongue member and the handle to rigidly lock the handle to the platform.

Independent claim 27 further defines the present invention as having the handle positionable to place the locking plate between tongue member and the handle to rigidly lock the handle to the platform. This is a novel aspect of claim 27 which is not taught or suggested by the Welter patent. As suggested by the Welter patent, "[s]uitable means (not shown) is provided in the lever arm 17 or handle 18 for the purpose of operating the latch 16." (column 2, lines 20-22). The Welter patent is silent as to what "suitable means" may include, nor is it inherent from the drawings what the "suitable means" may be because the disclosure states that such means are "not shown". A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Thus, while the handle 17 of the Welter patent may be operated to angularly position the handle 17 to align the latch 16 with a respective notch 14, positioning the handle itself will not engage or disengage the latch 16 with respective notch 14; only by operating the "suitable means" is the latch 16 engaged or disengaged from the respective notch 14 to lock or unlock the handle 17. Claim 27 of the present invention, however, explicitly states that the handle is positionable to place the locking plate between the tongue member and the handle to rigidly lock the handle to the platform; no additional "suitable means" is required.

As such, the Welter patent does not teach each and every element as set forth in claim 27 of the present application, neither expressly nor inherently, and thus the Welter patent does not anticipate claim 27. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 27 be reversed.

c. The Welter patent does not disclose a tongue member extending from and parallel to the handle.

Independent claim 27 further defines the present invention as a hand-truck having, *inter alia*, a tongue member extending from and parallel to the handle. The Examiner has termed yoke 15 of the Welter patent as a "handle" and latch 16 of the Welter patent as a "tongue member". The Welter patent states that "...[t]he yoke [15] carries a latch 16 adapted to engage the notches 14 to lock the yoke in various angular relations with the frame 1." (Emphasis added) (column 2, lines 14-16). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). For purposes of *arguendo*, even if the latch 16 of the Welter patent could be considered a "tongue member" as defined by claim 27 of the present application, latch 16 of the Welter patent is merely carried, or slidably disposed, within the yoke. Being that the yoke 15 and handle 17 of the Welter lie in the same plane, then the latch 16, carried within the yoke 15, also lies within the same shared plane as the yoke 15 and handle. A line or plane can not be parallel with itself, and as such, the Welter patent neither teaches nor suggests a tongue member extending from and parallel to the handle.

The Welter patent therefore does not teach each and every element as set forth in

claim 27 of the present application, neither expressly nor inherently, and thus the Welter patent does not anticipate claim 27. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 27 be reversed.

## 2. Claim 38

The Examiner erred in rejecting claim 38 as being anticipated by the Welter patent. Claim 38 depends from independent claim 27 and further defines the hand-truck as having the tongue member fixedly attached to an outer longitudinal surface of the rigid member. The Examiner has termed yoke 15 of the Welter patent as a "handle" and latch 16 of the Welter patent as a "tongue member". The Welter patent states, however, that "...[t]he yoke [15] carries a latch 16 adapted to engage the notches 14 to lock the yoke in various angular relations with the frame 1." (column 2, lines 14-16). The Welter patent further states that "[s]uitable means (not shown) is provided in the lever arm 17 or handle 18 for the purpose of operating the latch 16." (column 2, lines 20-22). Further, it appears from Figure 1 of the Welter patent that such operation of the latch 16 includes slidably engaging inwardly facing surfaces of the yoke. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Because latch 16 slidably engages inwardly facing surfaces of the yoke 15, such engagement can in no way be considered as an attachment to said surface, otherwise latch 16 would not be slidably positionable within the yoke 15. Further, *a fortiori*, by no means can latch 16 of the Welter patent be considered as fixedly attached to any surface of the handle 17, let alone an outer

longitudinal surface of the handle, as is defined by claim 38 of the present invention.

Because the Welter patent does not teach each and every element as set forth in claim 38 of the present invention, claim 38 is not anticipated by the Welter patent. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 38 be reversed.

**C. Whether claims 14, 28, 34, 35 and 36 of the present application were properly rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of the Welter Patent in view of the Howe patent**

The Examiner erroneously rejected claims 14, 28, 34, 35 and 36 of the present application as being obvious over the combination of the Welter patent in view of the Howe patent. 35 U.S.C. § 103(a) is as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 103(a).

When applying 35 U.S.C. § 103(a), the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible

hindsight vision afforded by the claimed invention; and

- (D) Reasonable expectation of success is the standard with which obviousness is determined.

*Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Finally, M.P.E.P. § 2143 states in part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

**1. Claim 14**

Independent claim 14 defines the present invention as a hand-truck comprising, *inter alia*, a platform and handle connected to the platform. The handle includes a rigid member having a tongue portion spaced-apart and extending parallel therefrom. A locking plate connects to the platform. The handle is pivotally positionable between a lowered position and a raised position wherein the handle is lockable to the platform by positioning the handle to dispose the locking plate between the spaced-apart tongue portion and the rigid member.

a. Neither the Welter patent nor the Howe patent, either singularly or in combination, disclose that the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member.

A novel and non-obvious aspect of independent claim 14, which is neither taught nor suggested by the Welter patent, is that the handle is positionable to dispose the locking plate between the tongue portion and the rigid member to rigidly lock the handle to the platform. To the contrary, in order to lock lever arm 17 to the frame 1 the Welter patent requires that “[s]uitable means (not shown) is provided in the lever arm 17 or handle 18 for the purpose of operating the latch 16” for locking the lever arm 17 to the yoke 15 (column 2, lines 20-22). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). The Welter patent is silent as to what “suitable means” may include to position the latch 16, nor is it inherent from the drawings what the “suitable means” may be because the disclosure states that such means are “not shown”. Thus, while the handle 17 of the Welter patent may be positioned to angularly position the handle 17 to align the latch 16 with a respective notch 14, positioning the handle itself will not engage or disengage the latch 16 with the respective notch 14 to lock the handle 17 to the frame 1; only by operating the “suitable means” is the latch 16 engaged or disengaged from the respective notch 14 to lock or unlock the handle 17 to the frame 1. Claim 14 of the present invention, however, explicitly states that the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member. Claim 14 does not require any additional “suitable means” as does the Welter patent.

Similarly, the Howe patent neither teaches nor suggests that the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue



portion and the rigid member because the Howe patent neither teaches nor suggests either a locking plate connected to the platform or a tongue portion spaced-apart and extending parallel to the rigid member. To begin with, and contrary to the Examiner's assertion, the Howe patent does not disclose a locking plate connected to the platform proximate to the channel member. The Howe patent suggests a "... hook 28... secured to the front end of the platform 10... [to serve] as a rest or support for the handle when in the operative position." (page 2, lines 7-10). Applicant respectfully requests the Board to take judicial notice that the common and ordinary meaning of the term "hook" includes "a curved or bent device for catching, holding or pulling", while the common and ordinary meaning of the term "plate" includes "a smooth flat thin piece of material". In so doing, not only is a plate structurally different than a hook, but their respective inherent functional purposes are different as well. As suggested by the Howe patent, the hook 28 itself serves as the rest or support for handle 22. In comparison, if hook 28 is to be considered a "locking plate" as the Examiner has erroneously concluded, the Howe patent suggests nothing that would let one skilled in the art to conclude that a plate (i.e., a smooth flat thin piece of material) would hold or lock the handle 22 in place. Only by the inclusion of a tongue portion attached to the handle as defined by claim 14 of the present invention would this be possible, and as previously discussed, the Howe patent neither teaches nor discloses a tongue portion. As such, the Howe patent neither teaches nor discloses that the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member.

For the aforementioned reasons, neither the Welter patent nor the Howe patent, either singularly or in combination, disclose that the handle is lockable to the platform by

positioning the handle to dispose the locking plate between the tongue portion and the rigid member. Independent claim 14 of the present invention is therefore novel and non-obvious over the Welter patent in view of the Howe patent because such combination does not disclose each and every element of independent claim 14. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 14 be reversed.

b. Neither the Welter nor the Howe patent, either singularly or in combination, disclose a tongue member extending from and parallel to the handle.

Independent claim 14 defines the present invention as a hand-truck having, *inter alia*, a tongue portion spaced-apart from and parallel to the rigid member of the handle. The Examiner has termed yoke 15 of the Welter patent as a "handle" and latch 16 of the Welter patent as a "tongue member". The Welter patent states that "...[t]he yoke [15] carries a latch 16 adapted to engage the notches 14 to lock the yoke in various angular relations with the frame 1." (Emphasis added) (column 2, lines 14-16). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). For purposes of *arguendo*, even if the latch 16 of the Welter patent can be considered a "tongue member" as defined by claim 27 of the present application, latch 16 of the Welter patent is merely carried, or slidably disposed, within the yoke. Being that the yoke 15 and handle 17 of the Welter patent lie in the same plane, then the latch 16, carried within the yoke 15, also lies within the same shared plane as the yoke 15 and handle 17. A line or

plane can not be parallel with itself, and as such, the Welter patent neither teaches nor suggests that the latch 16 is parallel to the handle 17.

Further, the Howe patent neither teaches nor discloses a tongue portion spaced-apart from and extending parallel to the rigid member of the handle. Neither the Welter patent nor the Howe patent, either singularly or in combination, disclose a handle having a tongue portion spaced-apart and extending parallel to a rigid member of the handle. Independent claim 14 of the present invention is therefore novel and non-obvious over the Welter patent in view of the Howe patent because such combination does not disclose each and every element of independent claim 14. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 14 be reversed.

## **2. Claim 28**

The Examiner improperly attempted to combine the Welter Patent with the Howe patent to allege that independent claim 28 was obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.). The level of skill in the art cannot be relied upon to

provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). Further M.P.E.P. § 2143.01 states in part:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.* at 35

Independent claim 28 defines the present invention as having, *inter alia*, a unitary rigid handle connected to the a platform positionable between a slidable position, a pivotable position and an extended locked position, with the handle being substantially perpendicular and fixedly securable to the platform while in the extended locked position. Independent claim 28 further defines the invention as having first and second spaced-apart hinge members positioned beyond an edge and fixedly connected to the platform with the handle slidably disposable between the hinge members.

In contrast to the presently claimed invention, the Welter patent suggests a handle 22 positionable between only a pivotable position and a locked position. The handle of Welter, however, while capable of being substantially perpendicular to the platform while in a locked position, is lockable to the frame 1 by disposing a latch 16, carried by yoke 15 fixedly attached to the handle 22, within a notch 14 of a quadrant 13. Quadrant 13 is fixedly attached to the frame. The Howe patent, on the other hand, suggests a handle positionable between a pivotal position and a slidable position, wherein the handle can slidably dispose between first and second spaced-apart hinge members. The Examiner

thus rejected independent claim 28 of the present application alleging that the combination of the Welter patent in view of the Howe patent read upon said claim. This combination, however, is improper because doing so would require a substantial reconstruction and redesign of the elements shown in the either patent as well as a change in the basic principle under which the construction of either patent was designed to operate.

In order for the handle of the Welter patent to be positionable between a slidable position, a pivotable position and an extended locked position, with the handle being substantially perpendicular and fixedly securable to the platform while in the extended locked position, the Welter patent would have to incorporate the spaced-apart hinge members as suggested by the Howe patent. In so doing, however, the handle of the Welter patent would still have to be slidably disposable between said spaced-apart hinge members in order to read upon independent claim 28 of the present invention. The handle of Welter, however, connects and locks to the frame 1 through its locking mechanism. That locking mechanism includes the aforementioned quadrant 13 with notches 14, yoke 15 and latch 16. Thus, if the spaced-apart hinge members of the Howe patent were to be incorporated into the Welter patent, in order for the handle of Welter to slidably dispose between said spaced-apart hinge members, the locking mechanism (*i.e.*, quadrant 13 with notches 14, yoke 15 and latch 16) would also have to slidably dispose between said spaced-apart hinge members. Referring to Figures 1 and 2 of the Welter patent, this appears to be a physical impossibility being that the quadrant 13 alone has the same height dimensions as the frame. Further, it appears that any forward positioning of the quadrant 13 into the frame 1 while being slidably disposed between the spaced-apart hinge members, as suggested by the Howe patent, is impossible.

Likewise, if the handle (and subsequent locking mechanism) of the Welter patent were to be incorporated into the vehicle as suggested by the Howe patent, the resulting handle would no longer be lockable to the platform because Welter's locking mechanism must be fixedly attached to the frame (or platform) in order to operate. The result of such a combination would be a handle (and attached locking mechanism) freely pivotable, regardless if the latch 16 is engaged with the notch 14 of the quadrant 13 because the quadrant 13 is pivotally connected to the frame (or platform).

In both situations, the prior art inventions, if modified, would in principle be changed. The logical conclusion would therefore be that only through a substantial reconstruction and redesign of the traction lever structure as suggested by the Welter patent (or a substantial reconstruction and redesign of the vehicle as suggested by the Howe patent) would a combination of the Welter patent and the Howe patent be permissible. As such, the proposed modification or combination of the Welter patent and the Howe patent would change the principle of operation of the prior art invention being modified, and the teachings of the references are not sufficient to render independent claim 28 of the present invention *prima facie* obvious. For the aforementioned reasons, Applicant respectfully requests that the rejection of independent claim 28 be reversed.

### **3. Claim 35**

Claim 35 depends from claim 34 which depends from independent claim 28 and further defines the hand-truck as having the tongue member fixedly attached to an outer longitudinal surface of the rigid member. The Examiner has termed yoke 15 of the Welter patent as a "handle" and latch 16 of the Welter patent as a "tongue member". The Welter

patent states, however, that "...[t]he yoke [15] carries a latch 16 adapted to engage the notches 14 to lock the yoke in various angular relations with the frame 1." (column 2, lines 14-16). The Welter patent further states that "[s]uitable means (not shown) is provided in the lever arm 17 or handle 18 for the purpose of operating the latch 16." (column 2, lines 20-22). Further, it appears from Figure 1 of the Welter patent that such operation of the latch 16 includes slidably engaging inwardly facing surfaces of the yoke. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Because latch 16 slidably engages inwardly facing surfaces of the yoke 15, such engagement can not be considered as an attachment to said surface otherwise latch 16 would not be slidably positionable within the yoke 15. Further, *a fortiori*, by no means can latch 16 of the Welter patent be considered as fixedly attached to any surface of the handle 17, let alone an outer longitudinal surface of the handle, as is defined by claim 35 of the present invention.

The Howe patent does not suggest, teach or disclose a tongue member.

Because neither the Welter patent nor the Howe patent, either singularly or in combination, teach each and every element as set forth in claim 35 of the present invention, claim 35 is non-obvious over said combination and believed to be patentable. Further, because it is believed that claim 28 is non-obvious and in allowable form, then claims 34 and 35 are also non-obvious and in allowable form. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claims 34 and 35 be reversed.

**4. Claim 36**

Claim 36 depends from independent claim 14 and further defines the hand-truck as having the tongue member fixedly attached to an outer longitudinal surface of the rigid member. The Examiner has termed yoke 15 of the Welter patent as a “handle” and latch 16 of the Welter patent as a “tongue member”. The Welter patent states, however, that “[t]he yoke [15] carries a latch 16 adapted to engage the notches 14 to lock the yoke in various angular relations with the frame 1.” (column 2, lines 14-16). The Welter patent further states that “[s]uitable means (not shown) is provided in the lever arm 17 or handle 18 for the purpose of operating the latch 16.” (column 2, lines 20-22). Further, it appears from Figure 1 of the Welter patent that such operation of the latch 16 includes slidably engaging inwardly facing surfaces of the yoke. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Because latch 16 slidably engages inwardly facing surfaces of the yoke 15, such engagement can not be considered as an attachment to said surface otherwise latch 16 would not be slidably positionable within the yoke 15. Further, *a fortiori*, by no means can latch 16 of the Welter patent be considered as fixedly attached to any surface of the handle 17, or an outer longitudinal surface of the handle, as is defined by claim 36 of the present invention.

The Howe patent does not suggest, teach or disclose a tongue member.

Because neither the Welter patent nor the Howe patent, either singularly or in combination, teach each and every element as set forth in claim 36 of the present invention, claim 36 is non-obvious over said combination and believed to be patentable.



For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 36 be reversed.

**D. Whether claims 20, 22 and 37 of the present application were properly rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of the Welter patent in view of the Howe patent and U.S. Patent No. 5,078,415 issued to Goral**

The Examiner erroneously rejected claims 20, 22 and 37 of the present application as being obvious over the combination of the Welter patent in view of the Howe patent and the Goral patent. 35 U.S.C. § 103(a) is as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 103(a).

When applying 35 U.S.C. § 103(a), the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

*Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Finally, M.P.E.P. § 2143 states in part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

**1. Claim 20**

The Examiner improperly attempted to combine the Welter Patent with the Howe patent and the Goral patent to allege that independent claim 20 is obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). Further M.P.E.P. § 2143.01 states in part:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.* at 35

Independent claim 20 defines the present invention as a material handling system having, *inter alia*, a platform, a handle connected to the platform positionable between a substantially vertical locked position and a stowed position, a channel member fixedly attached to an underside of the platform for receiving the handle, and a locking mechanism to lock the handle in the locked position.

In contrast to the presently claimed invention, the Welter patent suggests a handle 22 positionable between only a pivotable position and a locked position. The handle of Welter, however, while capable of being in a substantially vertical locked position, is lockable to the frame 1 by disposing a latch 16, carried by yoke 15 fixedly attached to the handle 22, within a notch 14 of a quadrant 13. Quadrant 13 is fixedly attached to the frame. The Howe patent, on the other hand, suggests a handle positionable between a pivotal position and a slidable position, wherein the handle can be stowed by positioning it within a channel member. The Goral patent also suggests channel members, but does not contain any suggestion of disposing a handle therein. The Examiner thus rejected independent claim 20 of the present application alleging that the combination of the Welter patent in view of the Howe patent read upon claim 20. This combination, however, is improper because doing so would require a substantial reconstruction and

redesign of the elements shown in either patent as well as a change in the basic principle under which the construction of either patent was designed to operate.

In order for the handle of the Welter patent to be positionable between substantially vertical locked position and a stowed position, the Examiner erroneously suggests that the Welter patent can incorporate the channel member as suggested by the Howe patent (or the Goral patent, for that matter). The handle of Welter, however, connects and locks to the frame 1 through its locking mechanism. That locking mechanism includes the aforementioned quadrant 13 with notches 14, yoke 15 and latch 16. Thus, if the channel members of the Howe or Goral patents were to be incorporated into the Welter patent, in order for the channel member to receive the handle of Welter, the channel member would also have to receive the locking mechanism (*i.e.*, quadrant 13 with notches 14, yoke 15 and latch 16). Referring to Figures 1 and 2 of the Welter patent, adding the channel member as suggested by the Howe patent appears to be a physical impossibility being that the quadrant 13 alone has the same height dimensions as the frame.

Likewise, if the handle (and subsequent locking mechanism) of the Welter patent were incorporated into the vehicle as suggested by the Howe patent, the resulting handle would no longer be lockable to the platform because Welter's locking mechanism must be fixedly attached to the frame (or platform) in order to operate. The result of such a combination would be a handle (and attached locking mechanism) freely pivotable, regardless if the latch 16 is engaged with the notch 14 of the quadrant 13 because the quadrant 13 is pivotally connected to the frame (or platform).

The same arguments apply to the combination of the Welter patent in view of the

Goral patent. In order for the channel member of the Goral patent to receive the handle of Welter, the channel member would have to be redesigned to receive the locking mechanism (*i.e.*, quadrant 13 with notches 14, yoke 15 and latch 16).

In each situation, the prior art inventions, if modified, would in principle be drastically changed. The logical conclusion would therefore be that only through a substantial reconstruction and redesign of the traction lever structure as suggested by the Welter patent (or a substantial reconstruction and redesign of either vehicle as suggested by the Howe patent or the Goral patent) would a combination of the Welter patent in view of the Howe patent and the Goral patent be permissible. As such, the proposed modification or combination of the Welter patent in view of the Howe patent and the Goral patent would change the principle of operation of the prior art invention being modified, and the teachings of the references are not sufficient to render independent claim 20 of the present invention *prima facie* obvious. For the aforementioned reasons, Applicant respectfully requests that the rejection of independent claim 20 be reversed.

## 2. Claim 22

a. Neither the Welter patent, the Howe patent nor the Goral patent disclose a locking plate attached to the channel member.

M.P.E.P. § 2143 states in part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Independent claim 22 further defines the material handling system of claim 20 as having the locking plate attached to the channel member. In contrast to the presently claimed invention, the Welter patent only suggests a quadrant 13 fixedly attached to the frame 1. The Welter patent suggests a handle 22 positionable between only a pivotable position and a locked position. The handle of Welter, however, while capable of being in a substantially vertical locked position, is lockable to the frame 1 by disposing a latch 16, carried by yoke 15 fixedly attached to the handle 22, within a notch 14 of a quadrant 13. And while the Welter patent suggests fixedly attaching a quadrant 13 to the frame, there is no suggestion of a channel member. The Howe patent, on the other hand, suggests a handle positionable between a pivotal position and a slidable position, wherein the handle can be stowed by positioning it within a channel member. However, the Howe patent does not suggest a locking plate. The Howe patent merely suggests the use of a hook 28 to support or rest handle 22 in an operative position. Applicant respectfully requests the Board to take judicial notice that the common and ordinary meaning of the term “hook” includes “a curved or bent device for catching, holding or pulling”, while the common and ordinary meaning of the term “plate” includes “a smooth flat thin piece of material”. In so doing, not only is a plate structurally different than a hook, but their respective inherent functional purposes are different as well. As suggested by the Howe patent, hook 28 itself serves as the rest or support for handle 22. (page 2, lines 7-10). In comparison, if hook 28 is to be considered a “locking plate” as the Examiner has erroneously concluded, the Howe patent suggests nothing that would let one skilled in the art to conclude that a plate (i.e., a smooth flat thin piece of material) would hold or lock the handle 22 in place in and of itself. Only by the inclusion of a tongue portion attached to the handle as defined by

claim 22 of the present invention would this be possible, and as previously discussed, the Howe patent neither teaches nor discloses a tongue portion. Regardless of whether hook 28 can be considered a plate, hook 28 of the Howe patent is attached to front of the platform 10, and not to a channel member. Neither the Welter patent, the Howe patent nor the Goral patent suggest attaching a locking plate to the channel member.

Because neither the Welter patent, the Howe patent nor the Goral patent, either singularly or in combination, teach each and every element as set forth in claim 22 of the present invention, claim 22 is non-obvious over said combination and believed to be patentable. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 2 be reversed.

b. The Examiner improperly attempted to combine the Welter patent with the Howe patent and the Goral patent.

The Examiner improperly attempted to combine the Welter Patent with the Howe patent and the Goral patent to allege that dependent claim 22 is obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie

case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). Further M.P.E.P. § 2143.01 states in part:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.* at 35

Independent claim 22 further defines the material handling system of claim 20 as having the locking plate attached to the channel member. In contrast to the presently claimed invention, the Welter patent suggests to attach the quadrant 13 (what the Examiner has taken to be a “locking plate”) to the frame 1. The Welter patent also suggests a handle 22 positionable between only a pivotable position and a locked position. The handle of Welter, however, while capable of being in a substantially vertical locked position, is only lockable to the frame 1 by means of a locking mechanism connecting the handle 22 to the frame. The locking mechanism of the Welter patent includes disposing a latch 16, carried by yoke 15 fixedly attached to the handle 22, within a notch 14 of a quadrant 13. Thus, while the Welter patent suggests fixedly attaching a quadrant 13 to the frame, there is no suggestion of using a channel member. The Howe patent, on the other hand, suggests a handle positionable between a pivotal position and a slidable position, wherein the handle can be stowed by positioning it within a channel member. However, the Howe patent does not suggest a locking plate. The Howe patent merely suggests the



use of a hook 28 to support or rest handle 22 in an operative position. Applicant respectfully requests the Board to take judicial notice that the common and ordinary meaning of the term “hook” includes “a curved or bent device for catching, holding or pulling”, while the common and ordinary meaning of the term “plate” includes “a smooth flat thin piece of material”. In so doing, not only is a plate structurally different than a hook, but their respective inherent functional purposes are different as well. As suggested by the Howe patent, hook 28 itself serves as the rest or support for handle 22. (page 2, lines 7-10). In comparison, if hook 28 is to be considered a “locking plate” as the Examiner has erroneously concluded, the Howe patent suggests nothing that would let one skilled in the art to conclude that a plate (i.e., a smooth flat thin piece of material) would hold or lock the handle 22 in place in and of itself. Only by the inclusion of a tongue portion attached to the handle as defined by claim 22 of the present invention would this be possible, and as previously discussed, the Howe patent neither teaches nor discloses a tongue portion. Regardless, hook 28 of the Howe patent is attached to front of the platform 10, and not to the channel member 17, so to combine the Welter patent with the Howe patent, the channel member 17 of the Howe patent must be incorporated into the device as disclosed by the Welter patent, with quadrant 13 of the Welter patent attached to the channel member. By doing so, however, the handle 22 will not be positionable into a stowed position because the quadrant, as taught by the Welter patent, will not be slidably positionable within the channel, as taught by the Howe patent.

In order for the handle of the Welter patent to be positionable between substantially vertical locked position and a stowed position, the Examiner erroneously suggests that the Welter patent can incorporate the channel member as suggested by the

Howe patent (or the Goral patent, for that matter). The handle of Welter, however, connects and locks to the frame 1 through its locking mechanism. That locking mechanism includes the aforementioned quadrant 13 with notches 14, yoke 15 and latch 16. Thus, if the channel members of the Howe or Goral patents were to be incorporated into the Welter patent, in order for the channel member to receive the handle of Welter, the channel member would also have to receive the locking mechanism (*i.e.*, quadrant 13 with notches 14, yoke 15 and latch 16). Referring to Figures 1 and 2 of the Welter patent, adding the channel member as suggested by the Howe patent appears to be a physical impossibility being that the quadrant 13 alone has the same height dimensions as the frame.

Likewise, if the handle (and subsequent locking mechanism) of the Welter patent were incorporated into the vehicle as suggested by the Howe patent, the resulting handle would no longer be lockable to the platform because Welter's locking mechanism must be fixedly attached to the frame (or platform) in order to operate. The result of such a combination would be a handle (and attached locking mechanism) freely pivotable, regardless if the latch 16 is engaged with the notch 14 of the quadrant 13 because the quadrant 13 is pivotally connected to the frame (or platform).

The same arguments apply to the combination of the Welter patent in view of the Goral patent. In order for the channel member of the Goral patent to receive the handle of Welter, the channel member would have to be redesigned to receive the locking mechanism (*i.e.*, quadrant 13 with notches 14, yoke 15 and latch 16).

In each situation, the prior art inventions, if modified, would in principle be drastically changed. The logical conclusion would therefore be that only through a

substantial reconstruction and redesign of the traction lever structure as suggested by the Welter patent (or a substantial reconstruction and redesign of either vehicle as suggested by the Howe patent or the Goral patent) would a combination of the Welter patent in view of the Howe patent and the Goral patent be permissible. As such, the proposed modification or combination of the Welter patent in view of the Howe patent and the Goral patent would change the principle of operation of the prior art invention being modified, and the teachings of the references are not sufficient to render independent claim 22 of the present invention *prima facie* obvious. For the aforementioned reasons, Applicant respectfully requests that the rejection of independent claim 22 be reversed.

### **3. Claim 37**

Claim 37 depends from independent claim 20 and further defines the present invention as a material handling system having, *inter alia*, a locking mechanism with a tongue member attached to an outer longitudinal surface of a handle. The Examiner has termed yoke 15 of the Welter patent as a “handle” and latch 16 of the Welter patent as a “tongue member”. The Welter patent states, however, that “[t]he yoke [15] carries a latch 16 adapted to engage the notches 14 to lock the yoke in various angular relations with the frame 1.” (column 2, lines 14-16). The Welter patent further states that “[s]uitable means (not shown) is provided in the lever arm 17 or handle 18 for the purpose of operating the latch 16.” (column 2, lines 20-22). Further, it appears from Figure 1 of the Welter patent that such operation of the latch 16 includes slidably engaging inwardly facing surfaces of the yoke. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore*

*& Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Thus, because latch 16 slidably engages inwardly facing surfaces of the yoke 15, such engagement can not be considered as an attachment to said surface otherwise latch 16 would not be slidably positionable within the yoke 15.

Neither the Howe patent nor the Goral patent suggest, teach or disclose a tongue member.

Because neither the Welter patent nor the Howe patent nor the Goral patent, either singularly or in combination, teach each and every element as set forth in claim 37 of the present invention, claim 37 is non-obvious over said combination and believed to be patentable. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 37 be reversed.

[This portion left intentionally blank]

### CONCLUSION

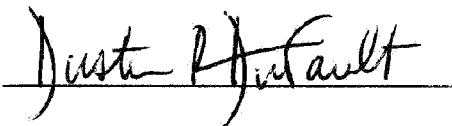
Applicant respectfully submits that claims 14, 20, 22, 27, 28 and 34-38 are allowable over the prior art for each of the aforementioned reasons. Applicant therefore requests reversal of the rejection of claims 14, 20, 22, 27, 28 and 34-38.

This Amended Brief was submitted with the appropriate fee and it is believed that no additional fee is due in association with the filing of this Appeal Brief. However, the Commissioner is hereby authorized to charge any additional fee required by this paper, or credit any overpayment, to Deposit Account No. 50-3738 of DuFault Law Firm.

Respectfully submitted,  
DuFAULT LAW FIRM, P.C.

Date: 25 April 2007

By:

A handwritten signature in black ink, appearing to read "Dustin R. DuFault", is written over a horizontal line.

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**VIII. CLAIMS APPENDIX**

Claims Involved In Appeal:

14. A hand-truck comprising:
- a platform;
  - a channel member fixedly attached to an underside of the platform;
  - a locking plate connected to the platform proximate to the channel member;
  - first and second spaced-apart hinge members fixedly attached to the channel member;
  - a handle connectable to the platform comprising:
    - a unitary rigid member slidably disposable within the channel member and between the first and the second spaced-apart members;
    - a tongue portion spaced-apart from and extending parallel to the rigid member; and
    - a stop positioned proximate to a distal end of the rigid member; and
- whereupon extracting the handle from the channel member, the stop engages the first and second hinge members and the handle is pivotally positionable between a lowered positioned and a raised position, wherein the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member.

20. A dual-purpose material handling system comprising:
- a platform having a plurality of sides for supporting a load placed thereon;
  - ground engageable wheels attached to the platform;
  - a unitary rigid handle positionable between a substantially vertical locked position and a stowed position connected to the platform;
  - a channel member fixedly attached to an underside of the platform for receiving the handle;
  - support members extending downward from the platform and positioned parallel to the channel member, wherein the support members and the channel member are positioned to receive a forklift between the channel member and either support member or transversal to the channel member and the support members, thereby allowing the material handling system to be transportable by the forklift from any side without the forklift contacting the handle regardless if the handle is in the locked position or the stowed position; and
  - a locking mechanism to lock the handle in the locked position, the locking mechanism comprising:
    - a locking plate; and
    - a tongue member spaced-apart from the handle, the tongue member and the handle engageable with the locking plate, whereupon disposing the locking plate between the tongue member and the handle, the handle fixedly secures to the platform in the locked position.

22. The material handling system of claim 20 wherein the locking plate attaches to the channel member.

27. A hand-truck for supporting and transporting a load placed thereon, the hand-truck comprising:

- a platform;

- a unitary rigid handle connected to the platform, the handle positionable between a slidable position, a pivotable position and a locked position;

- a locking plate connected to the platform; and

- a tongue member extending from and parallel to the handle, wherein the handle is positionable to place the locking plate between the tongue member and the handle to rigidly lock the handle to the platform, wherein the handle is accessible at each position to operatively maneuver the hand-truck.

28. A hand-truck for supporting and transporting a load placed thereon, the hand-truck comprising:

- a platform;

- a unitary rigid handle connected to the platform, the handle positionable between a slidable position, a pivotable position and an extended locked position, the handle substantially perpendicular and fixedly securable to the platform while in the extended locked position to prevent pivotal movement of the handle;



first and second spaced-apart hinge members positioned beyond an edge and fixedly connected to the platform, the handle slidably disposable between the hinge members; and

first and second stop members attached proximate to a distal end of the handle, whereupon slidably positioning the handle toward the pivotable position, the first stop member engages the first hinge member and the second stop member engages the second hinge member whereby the handle is pivotal about the first and second hinge members.

34. The hand-truck of claim 28 and further comprising:

a locking plate connected to the platform; and

a tongue member spaced-apart from the handle, the tongue member engageable with the locking plate, whereupon engaging the tongue member with the locking plate, the handle fixedly secures to the platform and is in the locked position.

35. The hand-truck of claim 34 wherein the tongue member fixedly attaches to an outer longitudinal surface of the handle.

36. The hand-truck of claim 14 wherein the tongue member fixedly attaches to an outer longitudinal surface of the rigid member.

37. The material handling system of claim 20 wherein the tongue member attaches to

an outer longitudinal surface of the handle.

38. The hand-truck of claim 27 wherein the tongue member fixedly attaches to an outer longitudinal surface of the handle.

**IX. EVIDENCE APPENDIX**

There is no evidence submitted with this Amended Appeal Brief.

**X. RELATED PROCEEDINGS APPENDIX**

There are no known related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.